

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability company,  
Plaintiff,  
vs.  
KEVIN SYKES-BONNETT and SYKED ECU TUNING INCORPORATED, a Washington corporation, and JOHN MARTINSON,  
Defendants.

CASE NO. 3:17-cv-05760-BHS  
**PLAINTIFF’S MOTION FOR LEAVE TO FILE SUPPLEMENTAL RESPONSE BRIEF AND SUPPLEMENTAL DECLARATION OF ANDREW P. BLEIMAN, ESQ. IN FURTHER OPPOSITION TO DEFENDANT JOHN MARTINSON’S MOTION FOR SUMMARY JUDGMENT**

**NOTING DATE: OCTOBER 4, 2019**

Plaintiff HP TUNERS, LLC, a Nevada limited liability company (“HPT”), for its Motion for Leave to File Supplemental Response Brief and Supplemental Declaration of Andrew P. Bleiman, Esq. in Further Opposition to Defendant John Martinson’s (“Martinson” or “Defendant”) Motion for Summary Judgment (Dkt. 183) states as follows:

1 In connection with this action, on September 3, 2019, Plaintiff filed its Response in  
2 Opposition to Defendant John Martinson's Motion for Summary Judgment (Dkt. 190).  
3 Defendant John Martinson's Motion for Summary Judgment is currently pending.

4 The purpose of the supplemental response brief is to apprise the Court of: (1) newly  
5 discovered emails on August 29, 2019, concealed and never produced by Defendants, which  
6 indicate Martinson's direct individual knowledge of and involvement with HPT's proprietary  
7 information; and (2) Magistrate Judge Fricke's September 16, 2019 Report and Recommendation  
8 on Plaintiff's Motion for Sanctions for Spoliation of Evidence (the "Spoliation Order") (see Dkt.  
9 202), which explicitly invokes Martinson's individual liability as a genuine material issue as a  
10 result of Defendants' destruction of critical evidence, which liability cannot possibly be  
11 extinguished by summary judgment due to the permanent absence of such evidence. These  
12 recent developments, both of which relate to the Defendants' discovery misconduct, further  
13 preclude summary judgment in favor of Martinson.

14 On September 3, 2019, Plaintiff filed its Response in Opposition to Defendant John  
15 Martinson's Motion for Summary Judgment (Dkt. 190). On or about August 29, 2019, while  
16 Plaintiff was in the midst of preparing its responses to the pending motions in this case, emails  
17 were electronically produced in connection with Rule 34 Requests for Production by the  
18 defendant in a separate action. These emails further demonstrate the instant Defendants'  
19 deception and concealment of relevant evidence by revealing specific communications between  
20 Martinson and Ken Cannata ("Cannata") that appear to show Martinson's possession of  
21 confidential and proprietary information of HPT. As a result, Martinson's alleged innocent  
22 bystander defense is unavailing, and the additional factual questions raised warrant denial of  
23 Martinson's motion for summary judgment should be denied.  
24  
25

1 Finally, in addition to the additional discovery information, on September 16, 2019,  
 2 Magistrate Judge Fricke entered the Spoliation Order, which ruling impacts Defendant John  
 3 Martinson's Motion for Summary Judgment.

4 The proposed Supplemental Response Brief in Further Opposition to Defendant John  
 5 Martinson's Motion for Summary Judgment is attached hereto as Exhibit A and the proposed  
 6 Supplemental Declaration of Andrew P. Bleiman, Esq. (without exhibits) is attached hereto as  
 7 Exhibit B.<sup>1</sup>

8 WHEREFORE, HP TUNERS, LLC, respectfully prays for an order granting it leave to  
 9 file a Supplemental Response Brief and Supplemental Declaration of Andrew P. Bleiman, Esq.  
 10 in Further Opposition to Defendant John Martinson's Motion for Summary Judgment and for  
 11 such other and further relief as this Court deems necessary and appropriate.  
 12

13 Dated this 18th day of September, 2019      Respectfully submitted,

14 s/ Andrew P. Bleiman  
 Attorneys for HP Tuners, LLC

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23 <sup>1</sup> The Exhibits referenced in the Supplemental Declaration have been marked as "Highly  
 24 Confidential" pursuant to Protective Order. Given such designation, Plaintiff will file the  
 25 exhibits and a motion to seal after leave to file the Supplemental Response has been granted.  
 Counsel can provide courtesy copies of the documents if the Court would like to review them in  
 connection with its ruling on this Motion for Leave.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2019, I caused the foregoing to be electronically with the Clerk of Court using the **CM/ECF system** which will electronically send Notice to all Counsel of Record.

MARKS & KLEIN

s/ Andrew P. Bleiman  
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